

1633. *March 20.* CRAIG *against* The HEIR of Cow.

CRAIG pursues the heir of Cow, upon the clause of requisition contained in a contract of wadset, passed betwixt the said pursuer and the defender's father. It is alleged for the defender, No process upon this contract, it being made *in anno* 1615, at which time, by reason of the Act of Parliament, Ja. VI, Par. —, cap. 1, it ought to have been subscribed by two notaries and four witnesses; and, although the contract be subscribed by two notaries, yet the subscription of the two notaries is not in one place, nor at one time. To the which it was answered, That the allegiance ought to be repelled, in respect of the Act: and farther eiked in corroboration of the said contract, the infestment followed upon this contract, which, albeit it was subscribed in the same manner with the contract, yet, by virtue thereof, the pursuer had been 20 years in possession. In respect whereof the Lords repelled the exception; which otherways would not have been sustained.

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1633. *July 20.* The EARL of ANNANDALE *against* The EARL of NITHSDALE's TENANTS.

THE Earl of Annandale, being infest in an annualrent of £3000 by the Earl of Nithsdale, to be uplifted furth of sundry his lands, arrests the duties of the lands of Glendovan in the tenants' hands, and pursues them to make the arrested goods forthcoming. It is alleged for the tenants, That they cannot be subject to make arrested maills forthcoming to the pursuer: Because, his infestment being only of an annualrent, and not of the property of the lands, cannot furnish to him personal execution against the tenants: but allenarly real execution for pointing of the ground, or personal, against the granter of the infestment; but noways against a third person, who was not obliged, and against whom no sentence for pointing of the ground was obtained, nor no other sentence, whereby the defenders may be compelled, *personali actione*, to make payment. The Lords repelled the allegiance, and sustained the summons.

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1633. *July 24.* SCOTT of ————— *against* SCOTT of WHYTEFEILD.

In an action of transferring pursued by Scott of ————— against Scott of Whytefeild, as heir to his father, who was cautioner to the pursuer in a bond, it was alleged, No transferring; because the defender offered to prove, that the principal party gave infestment to the pursuer, and he accepted the same in full satisfaction and payment of the sum contained in the bond. Which allegiance was found relevant.

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